

CRAIG H. MISSAKIAN (CABN 125202)  
United States Attorney

MARTHA BOERSCH (CABN 126569)  
Chief, Criminal Division

ELI J. COHEN (NYBN 5539226)  
Special Assistant United States Attorney

450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102-3495  
Telephone: (415) 436-7443  
FAX: (415) 436-7234  
[Eli.Cohen@usdoj.gov](mailto:Eli.Cohen@usdoj.gov)

Attorneys for United States of America

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

## SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

V.

ERLAN EDUARDO CRUZ-ACOSTA,

**Defendant.**

) Nos. 3:24-CR-00079 WHO  
 ) 3:22-CR-00136 WHO

## **UNITED STATES' SENTENCING MEMORANDUM**

) Court: Hon. William H. Orrick III  
 ) Hearing Date: June 26, 2025  
 ) Hearing Time: 1:30 p.m.

## I. INTRODUCTION

Defendant Erlan Eduardo Cruz-Acosta (“Cruz-Acosta” or “defendant”) has a demonstrated history of sex crime, selling dangerous drugs in San Francisco, and disregarding repeated deportation. For the reasons explained below, considering the factors set forth in 18 U.S.C. § 3553(a), the government respectfully recommends that the Court sentence Cruz-Acosta to: concurrent terms of imprisonment of 57 months as to Case No. 3:24-CR-00079 WHO and 10 months as to Case No. 3:22-CR-00136 WHO; a three-year term of supervised release; forfeiture of \$358 in U.S. currency, a digital scale, a machete, and a machete sheath; and a special assessment of \$300.

## II. FACTUAL AND PROCEDURAL BACKGROUND

#### **A. Criminal History and the Instant Offense**

1       **Prior Criminal History.** Over the last 20 years, Cruz-Acosta, a Honduran national in the United  
 2 States without legal status, has been committing serious felonies in this country, being removed, coming  
 3 back, and committing further crimes. *See* Pre-Sentence Investigation Report (“PSR”) ¶¶ 44-48. In  
 4 2006, he was convicted of Taking Indecent Liberties with a Child in Virginia. *Id.* ¶ 44. In that case, the  
 5 defendant, while aged 19, had sexual intercourse with a 12-year-old runaway girl who was staying at his  
 6 home. *Id.* He admitted to having sexual intercourse with the 12-year-old runaway, but claimed to have  
 7 believed she was 16 years old. *Id.* He was sentenced to just seven months imprisonment and two years  
 8 probation. *Id.* He absconded from supervision in 2007 and was found after being arrested in San Mateo  
 9 County, where he was ultimately convicted of Solicitation. *Id.* ¶ 45. Cruz-Acosta was ultimately  
 10 returned to Virginia and resentenced to three additional months imprisonment. *Id.* Subsequently, Cruz-  
 11 Acosta was removed from the United States for the first time, on or about March 13, 2008. *Id.* ¶ 47.

12       Approximately eight months later, Cruz-Acosta was back in California committing crime. *See*  
 13 PSR ¶ 46. He was arrested in November 2008, and convicted in January 2009, for Transport/Sell a  
 14 Controlled Substance in San Francisco, and sentenced to 42 days jail and three years probation. *Id.* He  
 15 was then arrested for Illegal Reentry Following Removal; he pleaded guilty in February 2009, receiving  
 16 a sentence of 18 months imprisonment and three years supervised release. *Id.* ¶ 47. He was again  
 17 removed from the United States to Honduras in June 2010. *Id.* In March 2013, Cruz-Acosta was once  
 18 again found in the United States, this time near the border in Arizona. *Id.* ¶ 48. He pleaded guilty to  
 19 Illegal Reentry Following Removal and was sentenced to 30 months imprisonment and three years  
 20 supervised release. *Id.* ¶ 48. Cruz-Acosta was removed for a third time in July 2016.

21       Cruz-Acosta reentered the United States at some point after his 2016 removal, ultimately  
 22 returning to San Francisco. At all times he was an illegal alien and had not obtained permission to  
 23 reapply for admission to the United States. PSR ¶ 15. He was arrested, under an alias, for selling  
 24 cocaine base to an undercover officer in the Tenderloin in August 2021 and being in possession of  
 25 further cocaine base, heroin, and powder cocaine. *Id.* ¶ 52. This case was ultimately dismissed in June  
 26 2022. *Id.* In September 2022, he was arrested in the Tenderloin again, this time for Possession of a  
 27 Controlled Substance for Sale, after he was observed conducting suspected narcotics transactions and  
 28 found in possession of cocaine, heroin, fentanyl, methamphetamine, and cocaine base. *Id.* ¶ 53. This

1 case was also dismissed. *Id.*

2 In November 2023, he was arrested for selling methamphetamine to an undercover officer  
3 (“UC”) and being in possession for sale of cocaine, cocaine base, heroin, and fentanyl; this conduct  
4 underlies Case No. 3:24-CR-00079 WHO. PSR ¶ 11. The UC approached Cruz-Acosta and his co-  
5 defendant Hector Omar Funez-Sanchez (“Funez-Sanchez”) to purchase methamphetamine. *Id.* Cruz-  
6 Acosta asked the UC how much he wanted, and the UC negotiated the purchase of \$80 worth. *Id.* Cruz-  
7 Acosta took the money from the UC and walked over to Funez-Sanchez, who retrieved  
8 methamphetamine from a plastic bag and handed it to Cruz-Acosta. *Id.* Cruz-Acosta then provided the  
9 methamphetamine to the UC. *Id.* The UC asked for more methamphetamine consistent with the amount  
10 of money provided, and Cruz-Acosta got more from Funez-Sanchez, then provided it to the UC. *Id.* In  
11 all, Cruz-Acosta provided 7.8 grams gross weight methamphetamine to the UC. *Id.*

12 Subsequent to the sale, SFPD officers arrested Cruz-Acosta and Funez-Sanchez, recovering \$20  
13 in marked funds, a digital scale, a machete, a machete sheath, \$358 in U.S. currency, 29.7 grams gross  
14 weight fentanyl, 26.4 grams gross weight cocaine base, 8.9 grams gross weight cocaine, and 4.9 grams  
15 gross weight heroin from Cruz-Acosta’s person. *Id.* ¶ 12-13.

16 **B. Procedural Background**

17 On March 30, 2022, a grand jury in the Northern District of California returned a one-count  
18 indictment charging Cruz-Acosta with Illegal Reentry Following Removal, in violation of 8 U.S.C. §§  
19 1326(a) and (b)(1), and on February 8, 2024, a grand jury in the Northern District of California returned  
20 a three-count indictment charging both Cruz-Acosta and Funez-Sanchez with one count of Distribution  
21 of Methamphetamine and Aiding and Abetting, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C) and  
22 18 U.S.C. § 2, Cruz-Acosta with one count of Possession with Intent to Distribute Fentanyl, in violation  
23 of 21 U.S.C. § 841(a)(1) and (b)(1)(C), and Funez-Sanchez with one count of Possession with Intent to  
24 Distribute Methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C). On July 11, 2024,  
25 Funez-Sanchez pleaded guilty to one count of Possession with Intent to Distribute Methamphetamine;  
26 the Court sentenced him to 15 months imprisonment and three years supervised release.

27 On November 7, 2024, Cruz-Acosta pleaded guilty to the sole count in the Indictment in Case  
28 No. 3:22-CR-00136 WHO, and Counts One and Two in the Indictment in Case No. 3:24-CR-00079

1 WHO, pursuant to a plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(B) (the  
2 “Agreement”). In the Agreement, for Case No. 3:22-CR-00136 WHO, the parties agreed on a base  
3 offense level of 8 under U.S.S.G. § 2L1.2(a), the application of a four-level (+4) specific offense  
4 characteristic of a prior Section 1326 conviction under § 2L1.2(b)(1)(A), and a two-level (-2) decrease  
5 for acceptance of responsibility under § 3E1.1, for an Adjusted Offense Level of 10. For Case No. 3:24-  
6 CR-00079 WHO, the parties agreed on a grouped base offense level of 24 under U.S.S.G. § 2D1.1(c)(8),  
7 the application of a two-level (+2) specific offense characteristic of the possession of a machete under  
8 U.S.S.G. § 2D1.1(b)(1), and a three-level (-3) decrease for acceptance of responsibility under § 3E1.1,  
9 for an Adjusted Offense Level of 23. The parties have reached no agreement regarding Cruz-Acosta’s  
10 Criminal History Category.

11 The United States agreed to recommend sentences no higher than the low end of the ranges  
12 associated with the Guidelines calculations set forth in Paragraph 7 of the Agreement, and that the  
13 sentences run concurrently, provided Cruz-Acosta did not violate the Agreement or fail to accept  
14 responsibility.

### III. OFFENSE LEVEL AND CRIMINAL HISTORY CALCULATIONS

## A. The PSR's Total Offense Level Calculations Are Correct

17 The government agrees with U.S. Probation's offense level calculations in the PSR, which are  
18 set forth below:

19 || Count Group 1: 3:24-CR-00079-WHO

Counts One and Two are grouped for guideline calculation purposes because the offense level is determined largely on the basis of the quantity of a substance involved. U.S.S.G. § 3D1.2(d); PSR ¶ 21.

a. Base Offense Level, U.S.S.G. § 2D1.1(c)(8) – at least 100 kg but less than 400 kg converted drug weight, based on the below calculations:

<b>Drug Name</b>	<b>Drug Quantity (Gross Weight)</b>	<b>Conversion Factor</b>	<b>Converted Drug Weight</b>
Methamphetamine	7.8 grams	2 kg	15.6 kg
Fentanyl	29.7 grams	2.5 kg	74.25 kg
Cocaine Base	26.4 grams	3.571 kg	94.274 kg
Cocaine (Salt)	8.9 grams	.2 kg	1.78 kg
Heroin	4.9 grams	1 kg	4.9 kg
			<b>190.8 kg total converted drug weight</b>

1	b. Specific Offense Characteristic under U.S.S.G. Ch. 2	
2	U.S.S.G. § 2D1.1(b)(1) – Possession of a machete at time of arrest	+ 2
3	c. Adjusted Offense Level	26

4 Count Group 2: 3:22-CR-00136-WHO

5	a. Base Offense Level, U.S.S.G. § 2L1.2(a)	8
6	b. Specific Offense Characteristics Under U.S.S.G. Ch. 2	
7	U.S.S.G. § 2L1.2(b)(1)(A) – Prior violation of 8 U.S.C. § 1326	+ 4

8	c. Adjusted Offense Level	12
---	---------------------------	----

9 Multiple Count Adjustment

10 Units are assigned pursuant to U.S.S.G. § 3D1.4(a), (b), and (c). One unit is assigned to the group with  
 11 the highest offense level. One additional unit is assigned for each group that is equally serious or from 1  
 12 to 4 levels less serious. One-half unit is assigned to any group that is 5 to 8 levels less serious than the  
 13 highest offense level. Any groups that are 9 or more levels less serious than the group with the highest  
 14 offense level are disregarded.

<u>Group/Count</u>	<u>Adjusted Offense Level</u>	<u>Units</u>
Count Group 1	26	1.0
Count Group 2	12	0.0
Total Number of Units:		1.0

18	a. Greater of the Adjusted Offense Levels Above:	26
19	b. No Increase in Offense Level Due to Number of Units	
20	c. Acceptance of Responsibility	-3
21	d. Total Offense Level	23

22       The government also agrees that Cruz-Acosta's criminal history category is III. PSR ¶ 50. A  
 23 Total Offense Level 23 at CHC III yields a Guidelines range of 57 to 71 months. In the Agreement, the  
 24 government agreed to recommend sentences no higher than the low end of the ranges associated with the  
 25 Guidelines calculations agreed upon by the parties, and to recommend that the sentences run  
 26 concurrently. Because U.S.S.G. § 3D1.1, App. Note 1 dictates that “[f]or purposes of sentencing  
 27 multiple counts of conviction, counts can be . . . (B) contained in different indictments or informations  
 28 for which sentences are to be imposed at the same time or in a consolidated proceeding[,]” Probation is

1 correct that the total offense level of 23 should dictate the Guidelines range for all three convictions in  
2 this case, and the government may have been in error in agreeing to recommend concurrent sentences at  
3 the low end of the Guidelines ranges for each adjusted offense level, rather than one recommendation  
4 based on the total offense level. *See PSR ¶ 76.* However, in order to remain in accordance with the  
5 Agreement, through which the parties agreed that the adjusted offense level applicable to the charge in  
6 the indictment underlying Case No. 3:22-CR-00136 WHO was 10, which yields a Guidelines range of  
7 10-16 months, the government recommends that the Court sentence the defendant to a term of 10  
8 months imprisonment as to Case No. 3:22-CR-00136 WHO, concurrent to its recommendation of 57  
9 months as to Case No. 3:24-CR-00079 WHO. This is permissible under U.S.S.G § 5G1.2(c), which  
10 dictates that “[i]f the sentence imposed on the count carrying the highest statutory maximum is adequate  
11 to achieve the total punishment, then the sentences on all counts shall run concurrently, except to the  
12 extent otherwise required by law.” The grouped counts underlying Case No. 3:24-CR-00079 WHO  
13 have the highest statutory maximum, 20 years. 21 U.S.C. § 841(b)(1)(C).

14           **B. The Government Agrees with Probation’s Application of the Sentencing  
15           Enhancement Under § 2D1.1(b)(1)**

16           The government further agrees with Probation’s recommendation that the two-point sentencing  
17 enhancement under U.S.S.G. § 2D1.1(b)(1) applies to this case. This Guidelines section states that it shall  
18 apply “[i]f a dangerous weapon (including a firearm) was possessed.” The Ninth Circuit has held that  
19 district courts should apply a preponderance of the evidence standard when evaluating the application of  
20 sentencing enhancements. *United States v. Lucas*, 101 F.4th 1158, 1162 (9th Cir. 2024) (en banc). “[T]he  
21 preponderance of the evidence standard is sufficient to satisfy due process for fact-finding under the  
22 advisory Guidelines, even when a fact has an extremely disproportionate effect on the sentence.” *Id.* That  
23 standard is clearly satisfied here, where SFPD recovered a machete from Cruz-Acosta’s person at the time  
24 of his arrest.

25           **IV. SENTENCING RECOMMENDATION**

26           **A. Legal Standard**

27           The United States Sentencing Guidelines serve as “the starting point and the initial benchmark” of  
28 any sentencing process and are to be kept in mind throughout the process. *See United States v. Carty*, 520

1 F.3d 984, 991 (9th Cir. 2008); *see also United States v. Kimbrough*, 522 U.S. 85, 108 (2007). The  
 2 overarching goal of sentencing, as set forth by Congress, is for the Court to “impose a sentence sufficient,  
 3 but not greater than necessary.” *Carty*, 520 F.3d at 991 (citation omitted). In accomplishing that goal,  
 4 the Court should consider the factors set forth under 18 U.S.C. § 3553(a), which include:

- 5           (1) the nature and circumstances of the offense and the history and  
               characteristics of the defendant;
- 6           (2) the need for the sentence imposed to reflect the seriousness of the  
               offense, to promote respect for the law, and to provide just  
               punishment for the offense;
- 7           (3) the need for the sentence imposed to afford adequate deterrence to  
               criminal conduct; and
- 8           (4) the need to avoid unwarranted sentence disparities among  
               defendants with similar records who have been found guilty of  
               similar conduct.

## 12           **B. United States Probation’s Recommendation**

13           Probation has recommended that Cruz-Acosta be sentenced to a term of imprisonment of 36  
 14 months; supervised release of three years; forfeiture of \$358 in U.S. currency, a digital scale, a machete,  
 15 and a machete sheath; and a special assessment of \$300. PSR at ¶¶ 24-30.

## 16           **C. Government’s Recommendation**

17           The government respectfully recommends that the Court impose a sentence of: concurrent terms  
 18 of imprisonment of 57 months as to Case No. 3:24-CR-00079 WHO and 10 months as to Case No. 3:22-  
 19 CR-00136 WHO; a three-year term of supervised release; forfeiture of \$358 in U.S. currency, a digital  
 20 scale, a machete, and a machete sheath; and a special assessment of \$300, as such a sentence  
 21 appropriately balances the § 3553(a) factors.

### 22           **1. Nature and Circumstances of the Offense and The History and               Characteristics of the Defendant; the Need for the Sentence to Reflect the               Seriousness of the Offense, Promote Respect for the Law, and Provide Just               Punishment**

23           Cruz-Acosta’s conduct in this case was very serious. He illegally reentered the United States for  
 24 a *third* time following removal and was caught selling methamphetamine. He had substantial amounts  
 25 of cocaine, cocaine base, heroin, fentanyl, and a machete on his person. Cruz-Acosta’s history and  
 26 characteristics also support the government’s recommended sentence. The defendant is a 40-year-old  
 27  
 28

1 man from Honduras with no legal status in the United States. He has been committing crimes in the  
 2 United States since at least 2005, including a sex crime against a 12-year-old child, and repeatedly  
 3 dealing drugs. He has been removed from the United States on three separate occasions, and illegally  
 4 reentered each time, despite being convicted of felony offenses for doing so twice before. He committed  
 5 his 2007 Solicitation offense while on probation for the child sex crime.

6 **2. The Need for the Sentence Imposed to Afford Adequate Deterrence to  
 Criminal Conduct**

7 The government's recommended sentence serves not only as specific deterrence to Cruz-Acosta,  
 8 but also general deterrence to others. Prior 18-month and 30-month federal prison sentences did not  
 9 deter him from illegally reentering, and his prior state sentences have been much shorter. A more  
 10 significant sentence is necessary to deter him from continuing his criminal conduct. Such a sentence  
 11 would also serve as general deterrence to others by communicating that illegally reentering the United  
 12 States for the purpose of purveying deadly drugs while armed with a machete will be punished  
 13 appropriately. Cruz-Acosta has proven himself unrepentant and a danger to the American public. The  
 14 government encourages the Court to view with suspicion Cruz-Acosta's assertion that "he has promised  
 15 himself he will not be back in this country and is going to stop engaging in illegal activity." PSR ¶ 62.

16 **3. The Need to Avoid Unwarranted Sentencing Disparities**

17 As Probation notes in the PSR, the Judiciary Sentencing INformation (JSIN) platform provides  
 18 that for fiscal years 2019-2023, similarly situated defendants received average and median sentences of  
 19 53 and 60 months, respectively. 57 months would be in line with these numbers.

20 While it is true that co-defendant Funez-Sanchez received a sentence of just 15 months, there are  
 21 important differences between the two defendants' conduct and histories. First, Cruz-Acosta acted as  
 22 the facilitator of the sale, interacting with the UC, negotiating the sale, and providing the  
 23 methamphetamine. Second, Cruz-Acosta was armed with a machete, while Funez-Sanchez was not  
 24 armed. Third, the government's recommendation for Funez-Sanchez was based in significant part on  
 25 then-applicable DOJ guidance that cocaine base be treated as powder cocaine for purposes of calculating  
 26 converted drug weight, as well as discounting packaging weight. Under that guidance, Funez-Sanchez's  
 27 total converted drug weight yielded a Guidelines range of 21-27 months, and the government  
 28

1 recommended 15 months. That guidance is no longer operative, but even if it were, the total converted  
2 drug weight for Cruz-Acosta would still be over 100 kilograms based on the gross weights – not  
3 discounting packaging weight – admitted to in the Agreement, and thus yield the same Guidelines range  
4 as the 190.8 kilograms converted weight admitted to in the Agreement. Additionally, Cruz-Acosta has a  
5 criminal history category of III based on six criminal history points, while Funez-Sanchez had a  
6 category II based on two criminal history points. Cruz-Acosta also has a conviction for a sex crime  
7 against a child which did not receive criminal history points.

8 **V. CONCLUSION**

9 For the foregoing reasons, the government respectfully recommends that the Court sentence  
10 Cruz-Acosta to: concurrent terms of imprisonment of 57 months as to Case No. 3:24-CR-00079 WHO  
11 and 10 months as to Case No. 3:22-CR-00136 WHO; a three-year term of supervised release; forfeiture  
12 of \$358 in U.S. currency, a digital scale, a machete, and a machete sheath; and a special assessment of  
13 \$300.

14

15 DATED: June 19, 2025

Respectfully submitted,

16 CRAIG H. MISSAKIAN  
17 United States Attorney

18

19 */s/ Eli J. Cohen*  
20 ELI J. COHEN  
21 Special Assistant United States Attorney

22

23

24

25

26

27

28